UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,336	12/12/2003	Abhay Sathe	10030721-1	7472

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EXAMINER
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ART UNIT	PAPER NUMBER
2192	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>18 August 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-17 and 19-25*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Tuan Q. Dam/
  Supervisory Patent Examiner, Art Unit 2192

Continuation of 11. does NOT place the application in condition for allowance because:

a) The limitations "libraries of software modules" (Remarks, page 8, third paragraph).

The examiner respectfully disagrees with Applicant's assertions.
The plain language of claims merely recites "a plurality of libraries of software modules maintained at a plurality of test locations, respectively, of a network" (e.g., claim 1, lines 2-3).
Sharon explicitly teaches a plurality of agents 14 deployed at a plurality of selected network computers (FIG. 1, col.5: 41-48, central management engine CME 12 as "a package of software modules"; FIG. 2, agents 14 include a plurality of libraries of software modules such as Network Monitor 32, Analyzer 38, Data Transfer Module 40, …, col.6: 38 - col.7: 24).

b) The Applicant asserted,
"The GUI 28 taught by Sharon in FIGS. 7, 8A & 8B enables the display of a 'physical topology map 82' (FIG. 8A) and a 'traffic topology map 84' (FIG. 8B). Although Sharon's col. 11, line 51 - col. 12, line 11, teaches that a user may navigate from one map to the other, or 'node hop' on the physical topology map to get information for particular network elements, Sharon is entirely silent on any ability to construct 'a graphical model of a coordinated multi-location test of [a] network' " (Remarks, page 8, last paragraph).

The examiner respectfully disagrees. Sharon explicitly teaches "The received traffic information is preferably compared to the physical topology map of the network, which is obtained from PMAP module 16. If the physical topology and logical packet flow information do not correlate, and in particular if there are gaps in the logical packet flow information which should not occur according to the physical topology map, then LPC process 66 optionally and preferably sends test packets. Thus, the correlation of the traffic and physical topology information by LPC process 66 enables changes to the physical topology map to be detected which would otherwise not be detected" (col.11: 6-15, i.e., using topology map 82 and traffic topology map 84 to monitor test packets between a plurality of network elements; col.12: 42-48).

c) The Applicant further asserted,
"Although the Examiner further refers applicant to Sharon's col. 3, lines 27-52, where Sharon indicates that the physical topology map may be used 'to guide the installation and deployment of agents throughout the network', Sharon does not indicate if or how this is done via the GUI shown in FIGS. 7, 8A & 8B" (Remarks, page 8, last 5 lines).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., how to guide the installation and deployment via the GUI) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner notes that the plain language of claims merely recites "a computer configured to i) display a graphical end user interface (GUI) via which an end user constructs a graphical model of a coordinated multi-location test of the network".
In the instant case, Sharon explicitly teaches "a GUI for displaying a broadcast node" in network (FIG. 7 and related text), "physical topology map" and "traffic map" (FIG. 8A-8B and related text).

d) The limitations "the graphical model including flows respectively corresponding to the test locations, … and ii) output the flows to at least one of the test locations" (e.g., claim 1, lines 6-7 and 8-9).

The examiner respectfully disagrees. Sharon explicitly teaches "a physical topology map" (FIG. 8A) and "a traffic map" (FIG. 8B), which are equated with "the graphical model", wherein said map/graphical model displays/outputs/monitors test packets (flows) sent to network elements (col.11: 6-15, col.12: 42-48, col.7: 34-42; col.12: 1-11).

In conclusion, Applicant's arguments are not persuasive. The examiner respectfully maintains the 35 USC 102 rejection over claims 1-17 and 19-25.